IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1399 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRATAPSINH VIRAJI CHUDASMA

Versus

STATE OF GUJARAT

Appearance:

MR RV SAMPAT for Petitioner

Mr. DP Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/04/2001

ORAL JUDGEMENT

Heard learned advocate Mr. R.V. Sampat for the petitioner and learned APP Mr. D.P.Joshi for the respondent State.

Rule. Service of rule is waived by Mr. D.P. Joshi, learned APP appearing for the respondent State.

The petitioner herein, who has been arrested in connection with Mangrol Police Station CR No. I-123 of 2000 for the offence under section 376, 452, 511, 323 of the Indian Penal Code has prayed for bail under section 439 of the Code of Criminal Procedure, 1973. As per the facts stated by the complainant Jiviben, wife of Haja Karshan, aged about 35 years, On 14.10.2000, at about 1.00 a.m., while she was sleeping in her house alone and while her husband was sleeping out side in the open, at that time, their neighbouring land owner Pratapbha Viraji Darbar i.e. the petitioner herein had entered her house and she, at once, got from her sleep upon feeling his touch. He, at once, removed his pent demanded intercourse to which she had said that she was having relations with him earlier but since her husband etc. have now known about her relations and, therefore, she was driven out by her husband and thereafter, she was allowed by her husband to enter the house only on condition that she should not keep any further illicit relations with him i.e. the petitioner herein. As per the averments made in the complaint, the complainant lady had, therefore, asked the petitioner to go away. However, the petitioner insisted for intercourse and removed her skirt and she resisted. It is further alleged in the complaint that the petitioner took the stick lying in her house and beat her with stick on both of her wrists and during that time, she opened the door suddenly and called her husband and, therefore, Pratap Viraji i.e. petitioner, leaving his pent in her house, ran away out of her house. It is also alleged that she had put on her skirt and her husband caught hold of Pratapsing Viraji. According to the complainant, both namely her husband and the petitioner were fighting out side and fell down and she feared that the said Pratap Virji will kill her husband and, therefore, she took the male organ of said Pratap Virji in her mouth and gave two bites to injure him with all force. During that period, according to her, her husband also had beaten on his head and mouth with two stick blows and Pratap Virji started crying with pains and during this time, her nephew Lakhman Bhikanji, Karsan Bhikanji arrived and Pratap Virji went away to his land and we saw him in moon light. At that time, many adjoining field owners also gathered there. Both of them namely complainant as well as her husband went to their house. Thereafter, aforesaid complaint being I CR No. 123 of 2000 was lodged before the police station on 14.10.2000 at 13.00 hours at Shil

and at 15.30 hours at Mangrol. Thereafter, on the basis of the said complaint being I CR No. 123 of 2000, the petitioner was arrested on 14th October, 2000 and thereafter, the chargesheet was filed against the petitioner on 15th January, 2001. Prior to this, the petitioner filed criminal miscellaneous application no. 40 of 2000 before the Sessions Court at Junagadh which came to be rejected by the concerned sessions court on 8.2.2001 and, therefore, the petitioner has filed the present application for bail under section 439 of the Code of Criminal Procedure.

During the course of arguments, learned advocate Mr. Sampat appearing for the petitioner has submitted that there is cross complaint filed by the petitioner herein against the complainant lady as well as her husband for the offence under section 326, 447, 504 of the Indian Penal Code at about 1.30 p.m. on the basis of which, the original complainant Jiviben as well as her husband were arrested by the police and subsequently, the complainant lady was released after a period of ten days and her husband was released after about one and half months and, therefore, according to Mr. Sampat, the petitioner is also entitled to regular bail on the ground of parity since the original complainant lady as well as her husband were released on bail by the concerned competent court. He has also relied upon some of the decisions of the apex court. The first authority which has been cited by Mr. Sampat is in case of Ashok Dhingra versus NCT of Nelhi reported in AIR 2000 SC 3537 (1). According to his submission, in the said decision, the petitioner was released on bail only on the ground that the accused therein was in custody for six months and to continue to detain during pretrial stage will not be in the interest of justice. Therefore, according to his submission, in the instant case also, the petitioner is in custody since 14th October, 2000 and considering the date of custody of the petitioner, he has also completed more than six months and, therefore, the petitioner is also entitled to be released on bail pending trial in view of the decision of the apex court as aforesaid. He has also relied upon the decision of the apex court in case of Gudikanti Narasimhulu and others versus Public Prosecutor, High court of Andhra Pradesh reported in AIR 1978 SC 429. According to his submission, in the said decision, the apex court has laid down four principles and ultimately considering the four principles, the apex court has decided the matter. He has also relied upon the decision in case of Chandra Swamy versus CBI, reported in AIR 1997 SC 2575 and has submitted that the apex court has considered the relevant provisions of

section 437 sub clause (1) and has granted bail in favour of Chandra Swamy. Thereafter, he has also relied upon the decision of the apex court in case of Bhagirath Sinh Jadeja versus State of Gujarat reported in AIR 1984 SC 372 and has relied upon the observations made by the apex court in the said decision and has submitted that very cogent and overwhelming circumstances are necessary in order seeking cancellation of bail; it is now well settled by catena of decisions of the apex court that the power to grant bail is not tobe exercised as if the punishment before trial is being imposed.

Learned APP Mr. DP Joshi appearing for the respondent State has submitted that the petitioner is not entitled to claim parity for being released on bail on the ground that in the cross complaint filed by the petitioner herein against the complainant lady and her husband, the complainant lady and her husband were released on bail and, therefore, he should also be released on bail. According to Mr. D.P. Joshi, learned Addl. P.P. appearing for the State, against the petitioner, there is specific charge of the offence under section 376, 452, 511 and 323 of the Indian Penal Code whereas the complainant lady and her husband, in the cross complaint filed by the petitioner are facing the charge under section 326 and other relevant sections of the Indian Penal Code and, therefore, the petitioner cannot claim parity in the matter of bail on that ground and he is not entitled to be enlarged on bail on the ground of parity. He has also submitted that considering the prima facie facts as alleged in the complaint by the complainant lady at their prima facie value, the petitioner has committed heinous crime. Not only that, when the complainant lady refused for intercourse as demanded by the petitioner, it is alleged that two stick blows were given by the petitioner on the wrists and, therefore, looking to the alleged conduct of the petitioner before commission of the crime and after commission of the crime, his conduct is heinous and, therefore, this application should not be allowed and discretion should not be exercised in favour of the petitioner for releasing him on bail. He has also submitted that the complainant lady has alleged in the complaint that at mid night at about 1.00 a.m., knowing fully well that the husband of the complainant was sleeping in the out side, the petitioner has entered in the house of the complainant and demanded for intercourse. The complainant lady has fairly disclosed in the complaint itself that in past she was having illicit relations with the petitioner but now, she is not willing to continue such relations with the petitioner

and has therefore asked the petitioner to leave the house and yet the petitioner has audacity to make an attempt to have intercourse by force and the petitioner is the land owner of the complainant lady and her husband and, therefore, there are every possibilities of tampering with the evidence and the witnesses if the petitioner is released on bail. Therefore, in view of such eloquent facts, learned APP Mr. Joshi has submitted that this is not the case where this Court should exercise the discretion in favour of the accused for releasing him on bail and, therefore, this application should be rejected. Learned APP Mr. Joshi has placed reliance upon the decision of the apex court in case of State of Orissa versus Rajendra Prasad Bharadia and Another reported in (1994) 5 Supreme Court Cases 146; in case of State of Maharashtra and another versus Madhukar Narayan Mardikar reported in AIR 1991 SC 207.

I have considered the averments made in the petition. I have also considered the submissions made at the Bar by the learned advocates for both the parties. I have also considered the complaint filed by the original complainant. It is important to consider the observations made by the apex court in the recent decision in case of State Government of NCT of Delhi versus Sunil and Another reported in (2001) 1 SCC 652. The observations made by the apex court in the said decision in para 21 are important. They are, therefore, reproduced as under:

"21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature, when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the

accused, through cross examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the trustfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

In view of these observations of the apex court, it is also necessary to consider the decision of the apex court in case of State v. Capt. Jagjitsinh reported in 1962 SC 252 wherein the apex court has made certain general observations while setting aside the order of the high court granting bail with regard to the principles that should govern the field in case of non bailable offence, which are as under:

"It (the High Court) should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non bailable offence. It is true that under S. 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide, even so where the offence is non bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non bailable offence."

In case of State of Orissa v. Rajendra Prasad Bharadia and another (supra), it has been considered by the apex court that while considering the bail application, cumulative effect of the over all circumstances must be considered. While making such

observations, the apex court has also considered the decision of Guru Baksh Singh Sibbia v. State of Punjab (1980)2 SCC 565; wherein the Constitution Bench of the apex court has held as under:

> "... the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

Here, it is necessary to consider the observations made by the Privy Council in case of Emperor v. Nazir Ahmad reported in AIR 1945 PC 18, on page 18 which are as under:

> "Just as it is essential that every one accused of a crime should have free access to a Court of Justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function."

The observations made by the Bombay High court in case of Santosh Bhaurao Raut versus State of Maharashtra reported in 1989 Cri. L.J. 205, para 4 in particular, are important. They are, therefore, reproduced as under:

> "Turning now to the merits viz. the eligibility of the applicant to get bail under section 439 or 482 of the Cr.P.C., Counsel refers to the unblemished past of the applicant, his readiness to face a trial and the fact of his being an

Architect. This, however, is one aspect of the matter, the other, being the heinousness of the crime and this having a bearing on the ensuring of the presence of the appellant at the trial and at the same time seeing to it that the prosecution witnesses are free from fear of being tampered with. The very manner in which the crime was committed gives the creeps to the listener. An innocent couple on its way to a pilgrimage is abducted by a gang of toughs by a mixture of bluff and bravado and the couple is forced to accompany the toughs. On the way, the husband is flung into the dark and the wife taken away to a secluded area. Here, her protests notwithstanding she is subjected to the lusts of four males who are litter better than beasts. But for the providential arrival of the police the culprits would have escaped scot free. The wonder is that anyone from the despicable quartet should have the temerity to apply for bail, invoking this Court's jurisdiction under Ss. 439 and 482 of the Cr.P.C. The applicant and the companions have behaved worse than animals and the manner in which the crime was committed debars them from any sort of indulgence. This is because it is evident that they will stop at nothing once released on bail from either absconding or intimidating the witnesses. The applicant's being an Architect and coming from a respectable family does not in any way diminish the possibility of his trying his best to queer the pitch once set at liberty. No conditions can deter a person who has participated in the gruesome and brazen crime ascribed to the applicant and his companions. The application fails and is hereby rejected."

In case of Bharwada Bhoginbhai Hirjibhai versus State of Gujarat reported in AIR 1983 SC 753, which was also a case for the offence under section 376 of the Indian Penal Code, the Supreme Court stated as under:

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of mal chauvinism in a male dominated society."

The Court also said that it was conceivable in the western society that female may level false accusation as regards sexual molestation against a male for several reasons and after setting out these reasons, the Court observed in para 10 of the report as under:

"By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also the rural society. It is also by and large true in the context of the sophisticated not so sophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because :- (1) A girl or a woman in the tradition bound non permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbors, (3) She would have to brave the whole world, (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered, (5) If she is unmarried, she would apprehend all it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family, (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself, (7) The fear of being taunted by others will always haunt her, (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo, (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy, (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on

account of the fear of social stigma on the family name and family honour, (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence, (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent."

A Single Judge of the Delhi HIgh Court in case of Chaman Ali v. State reported in (1992) 3 Crimes 767, which was again a case under section 376, IPC, observed as under:

"She is a married woman. There are many constraints to a married woman before lodging the FIR. Hence mere delay of about 8 hours, to my mind, is no ground for granting the bail. Her faculty was crowed because of the smelling of substance and it must have taken some time to come out of that trauma and then to inform her husband about what happened with her. Supreme Court in the case of Harpal Singh AIR 1981 SC 301:(1982 Cri. LJ 1), held that delay of about 10 days with respect to the filing of the FIR in cases of alleged rape was explained as a result of deliberation in the family whether to take the matter which involved the honour of the family to get the words was held to be responsible and could be expected as it was not a uncommon that such consideration delay action on the part of the near relations of girl who had been raped. Let us not forget that every woman in this Republic is under the protection of law and an offence committed on her cannot be treated with indifference notwithstanding any insulations or suggestions against her character. The delay by itself is no ground to grant the bail particularly her statement where she stated that she became so afraid that immediately she left the place of the petitioner for home and there she had to muster enough courage to tell this incident to her husband. I must say that for a married woman to tell her husband that rape had been committed on her must have required enough courage to do so. Moreover, the question of delay will be looked into on merits."

In para 29 of the decision in case of Court on

its own motion v. Vishnu Pandit and another reported in 1993 Cri. L.J. 2025, Delhi High Court has observed that the crime against women is on increase and courts have to be circumspect in granting bail to the accused persons accused of having committed heinous offences against the women.

The observations made by the Kerala High Court in case of; in Re : Director General of Prosecution, reported in 1993 Cri. L.J. 760, relevant paragraph 10A, in particular, are quoted as under:

"10A. From the facts stated that by the Sessions Judge, it is clear that accused who are charged with offence under section 3(xii) of the Act are also charged with offence punishable under section 376 of the Indian Penal Code. If accused in such a case is not to be tried for offence under the IPC, it will lead to miscarriage of justice. Section 3 (xii) of the Act states that whoever not being a member of a Scheduled Castes or a Scheduled Tribe being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed shall be punishable with imprisonment for a term which call not less than six months but which may extend to five years and with fine. As per this provisions, one who is in a position to dominate the will of the lady exploits her sexually, commits an offence under the Act. As per section 375 of the Indian Penal Code, sexual intercourse by a man with a woman under any of the six clauses mentioned therein constitute an offence of rape. Consent of the woman obtained prior to the act is a valid defence. But the consent given by a lady of the Scheduled Caste and Scheduled Tribe community to one who is in a position to dominate is no defence to a charge under section 3(xii) of the Act. It means that section 3(xii) takes within its ambit only a very few of the circumstances which constitute an offence of rape. The maximum punishment for such an offence is imprisonment for a term of five years. But punishment for an offence of rape under section 376 may extend to imprisonment for life. Legislature cannot be taken to have minimized the gravity of offence of rape if

committed on a woman belonging to Scheduled Castes or Scheduled Tribe. So accused who is alleged to have committed offences under section 3(xii) of the Act and 376 of the IPC should be tried by the Special Court in the same trial."

Here, it is a case of a woman namely the complainant who was sleeping in her house and at about mid night at 1.00 hours, an attempt was made by the petitioner to have intercourse with her which demand was immediately rejected by the lady and yet the petitioner had tried to have it by force and for which he had taken out the stick and had given two stick blows on the wrist of the lady and all the preparations were completed by the petitioner to have the intercourse with the lady complainant by force. If the discretion is exercised in favour of such a person for granting bail, then, as per my view, nobody would be safe in the society. No doubt, earlier, the lady complainant and the petitioner were having illicit relations as disclosed by the lady complainant in her complaint. Whatever the facts may be between them at an earlier point of time but one fact would remain that at the time of demand of having intercourse with the lady complainant, she immediately refused and pointed out the circumstances as to why she is not willing to continue such relations and ultimately she also requested him to go out from the house which request was turned down by the petitioner and an attack was made by giving two stick blows on the wrist of the original complainant. Therefore, taking into consideration the alleged conduct of the petitioner before incident and after the incident, as per my view, this is not the case where this Court should exercise the discretion in favour of the person for granting bail. In light of these facts of the present case, the observations made by the apex court in case of State of Orissa versus Madhukar Narayan Mardikar reported in AIR 1991 SC 207 are important.

"Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.At the most, the officer called upon to evaluate her evidence would be required

to administer caution upto himself before accepting her evidence.

The observation of the High Court that the complainant being an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government Official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person was wrong. On the contrary, she was honest enough to admit the dark side of her life. Her evidence was also corroborated in material particular."

As per my view, above observations would clearly apply to the facts of the present case. Here also, the complainant has fairly admitted her illicit relationship with the petitioner at an earlier point of time She was honest enough to admit the dark side of her past and therefore, while considering the case for bail, prima facie, her version cannot be ignored. I am, therefore, of the view that this is not the case where this court should exercise the discretion in favour of the petitioner for grant of bail.

Bail and not Jail is the well-cherished principle based on a right to personal liberty not only safeguarded but put at the highest pedestal also vide Article 21 of the Constitution of India; and so ordinarily personal liberty is the governing factor in case of bail, but the same cannot have dominion over larger interest, social order, public safety, and of course national interest too. The claim of the accused seeking bail, therefore, cannot be countenanced if it is likely to run counter to the larger interest, social order, public safety or the national interest. To put it in different words, bail cannot be granted under the guise of liberty if there is a likelihood of the accused's subjugating larger interest, public safety, social order and national interest, or there is a possibility of the accused's misusing or abusing his liberty after bail. In case of such likelihood, any subtly attempt to get bail under the guise of liberty must be frowned upon and frustrated.

About considerations to be borne in mind, this Court in the case of State of Gujarat versus Lalji Popat and others reported in 1988 (2) GLH 114, indicated as under:

(1) The nature of the charge is the vital factor and

the nature of evidence is also pertinent.

(2) The punishment to which the accused may be liable if convicted.

(3) While considering the question of granting bail under section 439 (1) of the Criminal Procedure Code, this Court should take into consideration the provisions of S. 437 (1) inspite of the fact that under S. 439(1) the High Court and the Sessions Court have wide jurisdiction to grant bail.

(4) The nature and gravity of the circumstances in which the offence is committed say highway robbery or dacoity, gang rape, murder or murders because of group rivalry, attack by one community on other community or such other cases.

(5) The position and the status of the accused with reference to the victim and the witnesses say in case of burning of house wife, witnesses may be neighbours, their evidence might be tampered with by any means.

(6) The reasonable possibility of the presence of the accused not being secured at the trial.

Merely because the accused is the owner of the large property, movable or immovable, would be no ground to presume that the presence of the accused would be secured at the trial by granting him bail. For this purpose, the charge, the nature of evidence by which it is supported and the punishment to which the party would be liable, if convicted, are to be taken into consideration. In cases of the highest magnitude of punishment assigned under the law the court can reasonably presume that no amount of bail was sufficient to secure the presence of convict at the stage of judgment. In some cases, accused may leave the country or go underground in such a manner that it becomes difficult to trace him out.

(7) Any likelihood of tampering with the witnesses.

This also depends on the seriousness of the offence and the nature of evidence. In serious offences if the accused are released on bail, they would be tempted to tamper with the evidence

by hook or crook. Therefore, the position and the status of the accused with reference to the victim and the witnesses and the events leading to the incident and the history of the accused are required to be taken into consideration. As observed by the Supreme Court, in regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of the society.

(8) Jeopardising his own life being faced with the grim prospect of possible conviction in the case.

(9) The prospect of victim or his relatives indulging in private retribution who feel helpless and may believe that law may not protest them.

(10) The larger interests of public, society or the State.

(11) Similar other circumstances depending on facts and peculiarity of each case.

It should be noted that law regarding bail cannot be static in each case the Court has to decide it on facts of each case and in the interest of justice and fair trial.

In view of such law, if there is possibility of the accused misusing the liberty, the bail application, whether anticipatory or regular, cannot be granted. Considering the facts of the present case, looking to the complaint filed by the complainant lady on 14th October, 2000, her version given in the complaint itself is sufficient enough to consider the heinous crime alleged against the petitioner, prima facie, for the purpose of deciding an application for bail preferred by the petitioner. If such a person like the petitioner herein is released on bail by exercising the discretion in his favour, definitely, he will leave no stone unturned to tamper with the evidence and to win over the prosecution witnesses as well as the prosecutrix herself and her husband since the petitioner is their neighbor, land owner and they are labourers. Considering the conduct, heinous crime alleged against the petitioner and the possibility of his tampering with the evidence as well as the witnesses, if the petitioner is released on bail, then, it is certain that the petitioner will misuse the liberty.

I have considered the decision given by the Sessions Judge, Junagadh in Misc. Criminal Application No. 40 of 2001 dated 8th February, 2001. I have also considered the reasons given by the concerned sessions Judge and the observations made by the learned sessions Judge while rejecting the bail application preferred by the petitioner herein.

While rejecting the bail application preferred by the petitioner, I have considered the strong prima facie case against the petitioner on the basis of the FIR and considering the reasons and the observations given by the learned Sessions Judge at Junagadh in aforesaid bail application for the purpose of bail application alone and, therefore, it is clarified that I am not prejudging the evidence which is yet to come on the record at the time of trial and forecloses the criminal trial. My observations while rejecting the bail application are at the prima face and ultimately the trial court concerned has to consider the entire matter at the time of trial on the basis of the evidence which will be adduced before it and, therefore, it is clarified that my observations made for the purpose of the present bail application will not come in the way of the competent court in deciding the criminal case against the petitioner on merits and in accordance with law and the trial court will decide the matter without being influenced by the observations made by this court in this matter.

I have also considered the decisions which were cited by the learned advocate for the petitioner Mr. R.V. Sampat. I respectfully agree with the ratio laid down by the apex court in those decisions. However, looking to the facts and circumstances of the present case, the decisions which are cited by learned advocate Mr. Sampat are not applicable to the facts of the present case.

The bonafides of the petitioner has been doubted by the prosecution. The say of the prosecution cannot be lightly taken and swept under carpet. It is emphatically submitted that the petitioner, if released, will misuse the liberty which would be injurious to the interest of the society. In short, when the possibility of misuse of liberty cannot be ruled out, bail cannot be granted; when the facts of the case are so eloquent inspiring no confidence, discretion should not be exercised in favour of the person seeking bail. Therefore, in the facts and circumstances of the case, I am of the view that the case

of the petitioner does not require any consideration for releasing him on bail.

In view of these observations and also considering all the aspects of the matters especially the woman who belongs to lower class community means a member coming from the lowest strata of the society who has become victim and the petitioner is belonging to Darbar Community, in a position to dominate the will of woman and uses that position by the petitioner to exploit the complainant sexually to which she would not have otherwise agreed shall be punishable with imprisonment for term which shall not be less than six months but which may extend to five years and with fine. As per this provisions, one who is in a position to dominate the will of the lady exploits her sexually commits an offence. As per section 375 of the Indian Penal Code, sexual intercourse by a man with a woman under any of the six clauses mentioned therein constitute an offence of rape. Therefore, considering all these peculiar aspects of the case and aforesaid reasons and larger interest of the society as well as considering the safety of the woman, in the society, I am of the view that this is not a fit case for exercise of the discretion in favour of the petitioner for releasing him on bail.

No other submissions were made by the either side.

For the aforesaid reasons, this application is rejected. Rule is discharged.

After the aforesaid order has been dictated in the open Court, learned advocate Mr. Sampat appearing for the petitioner has made a request before this Court to direct the concerned trial court for expediting the trial. Such a request made by Mr. Sampat cannot be entertained simply on the ground that at the very beginning, such suggestion was made by this Court to the learned advocate Mr. Sampat but that
ggestion was not
accepted and the learned advocate Mr. Sampat has insisted to argue the matter at length and invited the order on merits and, therefore, such request made by Mr. Sampat cannot be entertained and, therefore, the same is rejected.

16.4.2001. (H.K. Rathod,J.)

Vyas